

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TONY D. PENWELL,

Plaintiff,

v.

REED HOLTGEERTS, *et al.*,

Defendants.

CASE NO. C05-2106-TSZ-MJB

ORDER

(1) The Court ADOPTS the R&R, docket no. 97, with the following modifications to clarify the Court's ruling:

(a) Plaintiff has failed to raise a genuine issue of material fact regarding the facts as outlined in the Declaration of Brian O'Farrell, the Department of Adult and Juvenile Detention Programs and Classifications Supervisor for the Regional Justice Center in Kent, Washington. Mr. O'Farrell's Declaration supports the Defendants' need to place Mr. Penwell in Administrative Segregation to enforce Court Orders restricting Mr. Penwell's telephone use, and the Defendants' need to provide each inmate held in Administrative Segregation with the same programs and time out of their cells as all other inmates held in Administrative Segregation. O'Farrell Decl., docket no. 82, ¶¶ 5-9, 11, 15. Mr. O'Farrell states, in particular, that "[f]or staff and security reasons, inmates placed in Administrative Segregation cannot be given the same programs and privileges provided to those in the general population." *Id.* ¶ 15.

(b) Plaintiff has failed to raise a genuine issue of material fact that he has suffered an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life" as a result of his post-conviction confinement in Administrative Segregation. Sandin v. Conner, 515 U.S. 472, 484 (1995).

(4) The Clerk is directed to send a copy of this Order to Plaintiff, to counsel of record, and to Judge Benton.

DATED this 25th day of July, 2007.

Thomas S. Zilly
United States District Judge